LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Thirteenth Annual Report
April 1, 2003 to March 31, 2004

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OF
NOVA SCOTIA

THIRTEENTH ANNUAL REPORT

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The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the Law Reform Commission Act, S.N.S. 1990, c.17. It began operation in 1991.

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The Commission gratefully acknowledges this financial support.

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A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*.[1] The Commission consists of between five and seven Commissioners (there are currently six), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia. It is not, however, a government department, but an independent advisor to government. The Commissioners, whose appointment process is set out in the *Act*, currently serve part-time and come from different sectors of the community. One Commissioner is a judge appointed by the Governor in Council (provincial Cabinet) after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member; two are community representatives appointed by Cabinet; two are appointed by the Council of the Nova Scotia Barristers' Society; and one person represents the full-time members of the Faculty of Law, Dalhousie University. One of the Commissioners must not be a graduate in law.

Mandate

The Commission's job is to review Nova Scotia law and to make recommendations for its improvement, modernization and reform. This may involve formulating new ideas and approaches to law, or proposing ways in which existing laws and the legal system can be made clearer or simpler to better serve the needs of the general public. The Commission may choose a topic for law reform based upon suggestions received from government, lawyers, judges, or the community. A project may also follow a government request, generally known as a reference. Since 1991, the Commission has received four references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, and adoption information law.[2]

The Commission does not make law in Nova Scotia; that task is performed in part by the elected Members of the House of Assembly. The Commission's reports and recommendations are, however, formally presented to the Attorney General and may result in changes to the law. Law is also made through the decisions of judges and appointed administrative decision-makers in cases that come before them.

A distinguishing characteristic of the Commission is its independence from government. Although in the past the Commission received a significant portion of funding from government, on average about one third of its money came from other sources. Government has a role in Commissioner

[1] S.N.S. 1990, c.17, reproduced at **Appendix A**.

[2] Reports on the administrative justice, probate, and *Hospitals Act* projects have been completed. Following completion of background research, work on adoption information law was suspended after news in 2000 of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

selection, but does not choose all of the Commissioners, and no Commissioner is chosen to represent the Government. The Commission does undertake government requests for law reform projects, as far as is feasible, but apart from that requirement, is free to select the work it undertakes. So long as done in compliance with its object and powers under the *Act*, the Commission enjoys a free hand in terms of its activities: it may conduct meetings, hire people, perform research, publish reports, enter into cooperative arrangements with other entities, and decide how its funds are to be spent.

Law Reform Process

The Commission usually prepares two publications during the course of a project. The first publication, the ***Discussion Paper***, sets out the Commission's preliminary suggestions for reform. The purpose of the Discussion Paper is to encourage people to consider and comment on the Commission's preliminary suggestions, as well as any issues, principles, and assumptions identified as having influenced the Commission's proposals for reform.

As part of the preparations for a Discussion Paper, the Commission generally forms an ***Advisory Group***. The Advisory Group usually consists of Commission legal staff, and a number of community members, including government representatives, the judiciary, lawyers and other professionals, as well as participants from groups with interest or expertise in the topic being studied. The Group meets to identify and discuss relevant issues, as well as to propose to the Commission what should be included in a Discussion Paper.

The second publication is a ***Final Report,*** which is submitted to the Attorney General, and which is widely distributed. It contains the final recommendations of the Commission and, in some cases, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion Paper. A Final Report is intended to provide a basis for the Government to consider and adopt the recommended reforms. The process adopted by the Commission, of seeking expert advice, consulting widely, synthesizing feedback, deliberating and report writing, is a time-consuming one. It is a process, however, which is designed to give greater weight and credibility to the final recommendations which result. The Commission does not engage in active advocacy regarding implementation of its recommendations beyond providing the recommendations to the Government and members of the public. The Commission has produced 32 project reports and 12 annual reports, which are listed at **Appendix C**. [All reports can be downloaded without cost from the Commission's website.]

Effects of Law Reform Work

Recommendations in Commission Final Reports have been brought into effect in a number of ways. In 1994, a new *Maintenance Enforcement Act* was created, to improve the province's system which enforces court orders for maintenance obligations.[1] The 1994 statute was largely based on a draft *Act* contained in the Commission's Final Report on the enforcement of maintenance obligations in Nova Scotia. Both the 1998 *Juries Act* and the 2000 *Probate Act* were largely modelled on

[1] S.N.S. 1994-95, c. 6.

recommendations made in Commission Final Reports.[4] In 1998, the *Intestate Succession Act* was amended, to end distinctions based upon whether or not a child was born outside of marriage.[5] The Commission's 1995 Final Report, ***The Legal Status of the Child Born Outside of Marriage in Nova Scotia***, had recommended such a change. Moreover, the Commission's 1997 Final Report, ***Reform of the Law Dealing with Matrimonial Property in Nova Scotia***, recognized the need for reform of the law which governs the economic consequences of the ending of marriages or marriage-like relationships. In particular, the 1997 Report recommended that the relevant law should apply to both married and cohabiting couples, with no distinction based on the sex of the people involved. Following the Nova Scotia Court of Appeal decision in *Walsh* v. *Bona*,[6] which held the current law not to be consistent with the *Canadian Charter of Rights and Freedoms*, and which quoted at length from the 1997 Commission Report, the *Matrimonial Property Act* as well as other laws were changed in 2000 to extend certain rights and obligations to common law relationships, including same-sex couples.[7] Most recently, just after the end of the fiscal year summarized in this Annual Report, the Nova Scotia Government amended the province's *Mechanics' Lien Act*, thereby implementing most of the recommendations in the Commission's June 2003 Final Report on builders' liens.

The influence of the Commission's work goes beyond legislation. Certain Final Report recommendations have been implemented through government policies or protocols. Further to the Commission's 1995 Report on ending domestic violence in Nova Scotia, the Government trained some 2000 of its personnel in appropriate responses to domestic violence and established a domestic violence monitoring committee. Following the Commission's Final Report on reforming Nova Scotia's administrative justice system, in 1998 the Government established a course, "Foundations of Administrative Justice," to train members of tribunals that conduct hearings.

Commission reports have also served an important educational function. Available for free, either in print or through the Commission's website, they have been used as a source of legal information, not only by lawyers, but by a wide range of community members. Commission reports have also been used as course materials in high schools and at post-secondary institutions. Government, public interest groups, and other organizations have relied on Commission reports in order to develop awareness of issues and to focus discussions among interested people. For instance, *Law Reform Agencies*, a 2004 publication of the International Cooperation Group of the Federal Department of Justice, reflected the influence of Commission reports.

The contents of Commission reports have been referred to by a number of courts, including the Supreme Court of Canada, as part of their published case decisions. Commission reports have been

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[4] S.N.S. 1998, c. 16; S.N.S. 2000, c. 31.

[5] R.S.N.S. 1989, c. 236, as am. by S.N.S. 1999 (2nd sess.), c. 8, s. 7.

[6] (2000), 183 N.S.R. (2d) 74.

[7] *Law Reform 2000 Act*, S.N.S. 2000, c. 29.

mentioned by judges in the context of interim payment of damages, matrimonial property, administrative law, the jury system, and the legal status of the child born outside of marriage. For instance, in this reporting period, the Supreme Court of Nova Scotia in a family law decision quoted from the Commission's 1996 Discussion Paper on matrimonial property.[8]

Nova Scotia House of Assembly members from the Liberal, New Democratic, and Progressive Conservative parties have referred with approval to Commission reports or to Commission work generally, during the course of legislative debates.

Most of the Commission's time is spent choosing, discussing, and researching law reform subjects, followed by report writing and communicating the conclusions reached. Another significant role of Commission staff is responding to inquiries about the law or about aspects of the Commission's work. The Commission does not provide legal advice, nor does it intervene in individual cases. Nonetheless, since 1991 Commission staff have responded to a large number of inquiries, which were made by telephone, by fax, by letter, by e-mail, or in person. In replying to inquiries, Commission staff have provided legal information, copies of Commission reports as well as other documents, and contact details for government departments and other relevant institutions.

Funding

From 1991 to 2001, the Commission was funded jointly by the Nova Scotia Department of Justice and the Law Foundation of Nova Scotia. This funding covered all of the Commission's costs. Virtually all of the Commission's funding has taken the form of core or "block" funding, rather than money tied to the completion of particular work. The Law Foundation, which funds work relating to the law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts. The Law Foundation's objects specifically include law reform.[9] In August of 2000, the Commission learned that it would no longer be receiving government funding, beginning with fiscal year 2001-2002. Fortunately, in February 2001 the Commission received a three-year grant of $250,000 per year from the Law Foundation of Nova Scotia. This funding allowed the Commission to continue its law reform work until the end of this fiscal period. The Nova Scotia Department of Justice recently decided to restore partial funding to the Commission in the amount of $250,000 over the next two years. In discussion with the Department of Justice, the Commission has agreed to devote most of its resources over that period to participation in a collaborative review and revision of the Nova Scotia Rules of Civil Procedure. The Law Foundation of Nova Scotia has agreed to provide 50% of the Commission's funding for the upcoming fiscal year. As a result, the Commission has secured funding for 2004-2005 and looks forward with optimism to the prospect of funding for future years.

[8] *Sobey* v. *Cameron-Sobey*, 2003 NSSC 141.

[9] *Barristers and Solicitors Act*, R.S.N.S. 1989, c. 30, s. 55.

B. THE YEAR IN REVIEW 2003-2004

Work Program and Publications

During the past year the Commission completed and issued four project publications and began work on a number of other projects. A brief outline of some of the key features of those publications and projects is set out below:

Publications

1. Reform of the *Wills Act*

A will, although not legally required, can be an important document for anyone who owns property. A will can provide comfort to people from the knowledge that their property will be distributed in accordance with their wishes upon their death. It can also ensure that adequate financial support will be available for young children and other potentially vulnerable persons. A will is also often the cornerstone of an estate planning strategy designed to reduce the amount otherwise payable in taxes and probate fees. The *Wills Act* is the legislation which governs the creation of a valid will in Nova Scotia and is therefore not just important for people who work with wills such as lawyers, judges and employees of banks and trust companies. Rather, the *Wills Act* is of importance to anyone in Nova Scotia who is concerned about how his or her property will be distributed upon death. Nonetheless, changes to the *Wills Act* have not kept pace with legislative developments in other parts of Canada and with the needs of Nova Scotians.

In July 2003, the Commission published the ***Discussion Paper***, *Reform of the Nova Scotia Wills Act*, which contained the Commission's preliminary suggestions for reform. Following a period for the receipt of comments, in November 2003 the Commission published its ***Final Report*** on the *Wills Act*. The Final Report makes a number of recommendations, including:

- Holograph wills should be adopted in Nova Scotia.
- Consistent with the majority of other Canadian jurisdictions, the term "active service" should replace the current standard of "actual military service" in relation to privileged wills.
- The *Wills Act* should not be changed to allow wills in non-paper format (video, cinematographic, or electronic) in Nova Scotia.
- When referring to the age at which a will may be validly created, the *Wills Act* should set the relevant age by reference to the *Age of Majority Act*.
- For people who are under the age of majority, yet who wish to create a valid will, the *Wills Act* should include a standard confirmatory procedure. An objective third party,

such as the Public Trustee, should be appointed to certify whether a minor has the testamentary capacity required to create a valid will.

- A substantial compliance provision, which provides a court with discretion to allow as valid a will which does not comply with all formal requirements, but also requires as a minimum the deceased's signature, should be adopted in Nova Scotia.

- The current *Wills Act* provision which, subject to certain exceptions, revokes a will upon marriage should be retained. An amended *Wills Act* should clearly indicate that the revocation on marriage section also applies upon registration of a domestic partnership.

- A will should remain valid upon divorce or de-registration of a domestic partnership, but subject to a contrary intention in the will, the ex-spouse or former registered domestic partner should be treated as having predeceased the testator, and anything (gifts, benefits, or appointments) that would otherwise have been given to the ex-spouse or former registered domestic partner should be revoked.

- Section 15 of the *Wills Act* should be amended, to admit into probate wills validly made outside Nova Scotia with respect to real property, as it currently does for such wills involving personal property.

2. *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act*

In June 2003, the Commission released its ***Final Report***, *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act.*

A lien is a charge, or claim, which one person has on the property of another as security for the payment of a debt. Builders' lien legislation grants people who perform work, provide services, or furnish materials in relation to real property (land, buildings or other structures) with a lien on the property improved by the lien holders' efforts.

Builders' lien statutes are meant to provide builders, suppliers, and others who improve land with some protection against an inability or refusal to pay by the property owner, a contractor or a subcontractor. Confusingly, Nova Scotia's builders' lien legislation is called the *Mechanics' Lien Act.*

The Commission has received a number of letters since 1993 suggesting that this legislation should be reformed. The Nova Scotia Branch of the Canadian Bar Association has also long considered that this area of the law was ripe for reform. More recently, representatives of the construction industry have strongly urged the Government and the Law Reform Commission to undertake work leading to the reform of this area of the law. The construction industry is a significant component of the Nova Scotia economy.

As the Commission stated in its Discussion Paper on Builders' Liens in Nova Scotia: "*...Nova Scotia's laws should facilitate the well being, good management, and fair operation of this industry, one which touches many lives. In addition to people in the construction trade, the Mechanics' Lien Act is of importance to commercial and real property lawyers, employees of certain government departments, financial institutions, architects, engineers, and individual property owners. The Mechanics' Lien Act is more than 100 years old, and in some respects, has remained unchanged for all of its lifespan. Given these circumstances, the Commission considered it appropriate to examine the Mechanics' Lien Act in detail and where suitable, to make proposals for reform.*"

Construction projects typically involve a pyramid-like structure of independent contracts. The owner is at the top, the next level is occupied by the general contractor, and additional levels are occupied by subcontractors or material suppliers. Payments as part of a construction project are generally made as the work progresses and proceed from top to bottom of the pyramid. Given the number of contractual relationships that a construction project can involve, one party's inability or refusal to pay can negatively affect numerous people occupying lower positions in the construction pyramid.

Under builders' lien legislation, if lien holders are not paid for their work, the ultimate remedy is that a property may be sold, with proceeds divided among lien holders in priority to certain other creditors. Builders' liens therefore serve as a type of security for people who might otherwise be unable to obtain payment for the value which they have provided.

The Commission's proposals for reform include: the *Mechanics' Lien Act* be extended to apply to the provincial Crown; certain guidelines for arbitration of a builders' lien dispute should be added to the legislation; trust fund provisions in the context of builders' liens should be adopted; the right of lien holders to seek information relevant to their lien claims from owners and certain other parties should be expanded; the ability to shelter ("piggy-backing" on another lien claim that has been made in time) should be eliminated, and the *Act*'s title should be changed to the *Builders' Lien Act*.

Just after this reporting period, the Nova Scotia Government amended the *Mechanics' Lien Act* and implemented most of the recommendations in the Commission's Final Report[10].

3. *Privity of Contract (Third Party Rights)*

The concept of privity provides that only a party to a contract may sue or be sued under it. The concept has two parts. First, only a party to a contract may enforce its terms. Second, a contract cannot impose obligations on a person who is not a party to the contract. The first part of the concept can lead to inconvenience or hardship with respect to those contracts, sometimes known as third party beneficiary agreements, which seek to provide a benefit to

[10] S.N.S. 2004, c. 14.

a person who is not a party to the contract. A benefit could involve the receipt of something, such as a payment of money, or it could mean a right to avoid or lessen the effect of something, such as a limitation on liability. The range of possible third party beneficiary agreements is quite wide. They could be especially relevant in the context of family gifts, small business transactions, banking arrangements, and employment situations. Regardless of the benefit involved, the third party meant to benefit can obtain no rights under such a contract and will therefore not be able to enforce it.

The Commission is of the view that the current form of the privity rule could lead to situations of inconvenience or hardship, and that the justification for retaining the purity of privity has been undermined by the development of numerous exceptions. Moreover, rather than exclusively approaching privity as a problem to be fixed, the Commission thinks that changes to the privity rule could be viewed more positively, as an opportunity for forward-thinking change. One such opportunity would be to demonstrate how Nova Scotian laws are progressive, outward-looking, and receptive to the requirements of business. The Commission suggests that relaxing privity requirements, by allowing third party beneficiaries to enforce their rights under a contract, could in part help to prevent contractual inconvenience and hardship but more significantly, would allow Nova Scotian contract law to become more advanced, flexible, and receptive to commercial and social realities.

In March 2004, the Commission published the ***Discussion Paper***, *Privity of Contract (Third Party Rights)*, in which the Commission makes a number of preliminary proposals for reform:

- The privity of contract concept should be relaxed by statute, to allow third party beneficiaries to enforce their rights under a contract.
- Although a written third party beneficiary agreement has advantages over an oral one, a proposed statute should not require third party beneficiary agreements to be in written form.
- Under the proposed statute, a third party beneficiary should be identified in a contract by name, description, or reference to a class.
- The proposed statute should allow for third party beneficiaries who are not known or in existence at the time a contract is made.
- A third party beneficiary agreement should be able to extend both positive advantages and to allow the avoidance of certain negative results.
- The proposed statute should make no distinction between express and implied third party benefits.

- Contracting parties should be able to vary or rescind their agreement at any time. If, however, they know or ought to know that their decision will cause a loss to the third party beneficiary who is relying on the agreement, they will be liable for that reliance loss.

- The proposed statute should ordinarily entitle a third party beneficiary to enforce an agreement in his or her own name as it relates to his or her rights under the agreement.

- A third party beneficiary should not be able to enforce a benefit where the contract's language makes it clear that the parties did not intend their agreement to be enforceable by a third party.

- In legal proceedings involving a third party beneficiary agreement, any defence should be available that could have been raised in proceedings between the parties.

It is anticipated that a Final Report on Privity of Contract (Third Party Rights) will be published in the summer of 2004.

Work in Progress

1. Court-ordered structured settlements-Personal Injury Damage Awards

Preliminary work on this project began in the latter part of 2002. Initially the project concerned itself with the issue of whether or not the courts in Nova Scotia should have jurisdiction in certain circumstances to order the imposition of a structured settlement when awarding damages in personal injury cases.

Shortly before the anticipated publication of a Commission Discussion Paper on this subject, the government introduced and passed legislation amending the *Judicature Act* which, amongst other things, provides the courts with the jurisdiction to order structured settlements in personal injury cases. As a result the original purpose of this project became effectively moot. The Commission had, however, gathered some potentially useful information with respect to structured settlements and those circumstances in which the courts may find their use to be appropriate. The Commission decided therefore to re-draft the Discussion Paper with a view to making available a background paper for the information of those most interested in the use of structured settlements, namely judges, lawyers and recipients of personal injury damage awards. It is anticipated that this Paper will be issued in the summer of 2004.

2. Rules Revision Project

Some of the Commission's earlier work, begun in the summer of 2002, on an access to justice -civil justice reform initiative came to fruition in the spring of 2004. In January the

Commission participated along with members of the Nova Scotia Court of Appeal and the Supreme Court, the practicing bar and the Department of Justice in an all-day 'chartering session' relating to a comprehensive revision of the Civil Procedure Rules. The purpose of the chartering session was to determine the feasibility of undertaking a major rules revision project and to examine how that work might be undertaken. It is over thirty years since the Nova Scotia rules were completely revised.

The Civil Procedure Rules govern proceedings of the Nova Scotia Court of Appeal and the Supreme Court including the Family Division of the Supreme Court. The rules are written and amended by the judges of the Supreme and Appeal Courts under the authority of the *Judicature Act*. Although the rules have served the province well, increasing concerns about delays, costs and the undue complexity of court proceedings point to the need for the rules to be examined in detail and re-written where required. The Supreme Court of Nova Scotia has commenced a comprehensive review and revision of the rules. At the invitation of the Supreme Court, the Law Reform Commission, the Nova Scotia Barristers' Society and the Nova Scotia Department of Justice are also participating in the Rules Revision Project. The aim of this two-year collaborative effort is to develop rules which are efficient, effective and clear. This should help to reduce delays, lessen expenses and lead to more satisfactory results, thereby improving access to justice. The Law Reform Commission has undertaken the management of this two-year project which the Commission expects will be its principal preoccupation during the life of the project.

The civil justice issues of concern in Nova Scotia are common, to a greater or lesser extent, to all Canadian jurisdictions. Clearly the quality of our civil justice system is of potential importance to all Nova Scotians. The Commission believes that the Civil Procedure Rules are vitally important to the health of our justice system and for that reason agreed to participate in this important public project. The Nova Scotia Department of Justice has provided the Commission with funding in the amount of $250,000 in order to facilitate the Commission's participation in the Rules Revision Project. This grant represents approximately half of the Commission's funding requirements for the next two years.

Several years ago the Alberta Law Reform Institute undertook a comprehensive revision of Alberta's Civil Procedure Rules. In March 2004 a delegation from the Alberta Law Reform Institute travelled to Nova Scotia and met all day with the Rules Revision Project's Steering Committee. The Alberta delegation very generously shared not only their accumulated experience to date with the Alberta Rules Project, but also a very considerable body of their completed work.

Partnership: Saint Mary's University

In July 2003, discussions initiated with Saint Mary's University in December 2001 culminated in the signing of a formal Memorandum of Understanding setting out the cooperative arrangements and terms of a partnership between Saint Mary's and the Law Reform Commission. Dr. Terry Murphy,

Vice President, Academic and Research of Saint Mary's University stated at the time of the signing ceremony that: "*Saint Mary's believes in the importance of law reform to all Nova Scotians and looks forward to assisting with the work of the Law Reform Commission of Nova Scotia.*"

In furtherance of Saint Mary's commitment to law reform and the Commission, the President of Saint Mary's, Dr. Colin Dodds, hosted a meeting with the Attorney General of Nova Scotia to discuss the Law Reform Commission, its future, and joint research activities with Saint Mary's.

One of the long term objectives of this partnership is to relocate Commission offices to the Saint Mary's University campus. This move will facilitate the pursuit of collaborative opportunities including potential joint research projects.

Both the University and the Commission believe that Saint Mary's affiliation with the Atlantic Centre for Ethics and Public Affairs, the Atlantic Metropolis Centre[11], as well as various University departments and schools, provide a number of potential opportunities for the pursuit of activities and projects of mutual interest.

Such collaborative activities are currently in development and a matter of active discussion. It is anticipated that during the upcoming year the Commission will initiate some joint activity with Saint Mary's University in furtherance of their recent partnership.

External Activities and Relations

The Commission and its staff consider it particularly important to maintain close liaison with the practicing bar, the judiciary, the legal academic community, the Government and others. In order to further this objective, Commission staff have attended and participated in a number of external meetings and conferences during the past year in addition to many less formal activities. In particular the Commission's Executive Director participated in the Annual Meetings of:

- the Nova Scotia Barristers' Society
- the Federation of Law Reform Agencies of Canada
- the Uniform Law Conference of Canada
- the Association of Canadian Court Administrators

In addition the Executive Director attended various other meetings and events hosted by such organizations as the Legal Information Society of Nova Scotia, the Canadian Bar Association - Nova Scotia Branch, the Nova Scotia Barristers' Society and the Law Commission of Canada.

The Commission has also continued to maintain and strengthen its relations with sister law reform

[11] Metropolis is an international forum for research and policy on migration, diversity and changing cities.

bodies and other participants in the justice system. The Executive Director is the current President of the Federation of Law Reform Agencies of Canada. He has also participated over the past year in a special committee of the Uniform Law Conference of Canada on public inquiries. During the course of the fiscal year, meetings have been held with, amongst others:

- the Minister of Justice and Attorney General of Nova Scotia
- the Deputy Minister of Justice and Deputy Attorney General of Nova Scotia
- the President of the Law Commission of Canada
- the Executive Director of the Canadian Bar Association
- the Executive Director of the Canadian Forum on Civil Justice
- the President of the American College of Trial Lawyers
- the President of the CBA-Nova Scotia Branch
- the President of the Nova Scotia Barristers' Society
- the Executive Director of the Nova Scotia Barristers' Society
- the President of Saint Mary's University
- the Vice-President, Academic and Research, Saint Mary's University

Commission staff also attended an international symposium in Toronto on Access to Justice presented by the Law Society of Upper Canada.

As part of its efforts to help set up an effective, independent law reform body in Bangladesh, the International Cooperation Group of the federal Department of Justice continued to consult with Commission staff and to rely extensively on Commission publications, in particular, the December 2001 report, *A Continuing Need for Law Reform: The Case For The Law Reform Commission of Nova Scotia.*

During the reporting period the Commission's staff provided media interviews and Commission work was mentioned in such informational and news media as *Ad Hoc* (Canadian Bar Association-Nova Scotia Branch), the *Cape Breton Post*, CBC Radio (national and local), the *Chronicle Herald*, the Construction Association of Nova Scotia website, the *Daily News* (Halifax), *InForum* (Nova Scotia Barristers' Society), the *Lawyers' Weekly*, *Step Inside* (Society of Trust and Estate Practitioners), and *Vanguard* (Yarmouth).

In March 2004, the Nova Scotia Department of health issued a long-anticipated discussion document on mental health legislation. That document shows the influence of the research and recommendations in the Commission's 2001 Final Report on the *Hospitals Act.*

The Commission maintains on its website an open invitation to the public for project suggestions and new ideas for law reform. This invitation is also published in the *Society Record* (Nova Scotia Barristers' Society) and other media throughout Nova Scotia.

Internal Administration and Organization

The Commission currently has six Commissioners and is anticipating the appointment of a seventh in the near future.

In the past year the Commissioners met on eight occasions.

John E.S. Briggs continued to serve as Executive Director and General Counsel and William Laurence as Legal Research Counsel. The Commission's Administrative Assistant is Mary Bowen.

Funding & Finances

During the past three fiscal years commencing April 1st, 2001, the Commission has been wholly funded by the Law Foundation of Nova Scotia by virtue of a three-year grant of core funding in the amount of $250,000 per annum. The Commission is most appreciative of the Law Foundation's support, without which the Commission could not have continued to operate.

From the establishment of the Commission in 1991 until 2001 the Commission received on average two-thirds of its funding from the Government of Nova Scotia and the remaining one third from the Law Foundation. At the time of its establishment it had been purposely decided in discussions between the Government and the Law Foundation that the Commission would be funded equally by both. It was believed that with this funding arrangement the Commission would be, and would be seen to be, more independent than if it received all of its funds from Government. The original (1991) Commission budget was $300,000 (now $377,000 when adjusted for inflation), of which it was expected that the Law Foundation and Government would each provide half of the required core funding.

In its December 2001 report, *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia*, the Commission stated: "*Law reform fulfills a public need....The Commission takes the position that given the need for law reform, it is not merely appropriate, but is necessary the Government participate in the funding of such initiatives.*"

The fiscal year ended on a high note with the return of provincial government funding support in the amount of $250,000 to be expended over the next two years. It should be noted, however, that the Commission's budget has remained static for the past four years at the level of $250,000 per annum. The Commission has carefully managed its funds with the result that it has been able to maintain a reserve fund which at year end stood at approximately $33,000.

The Commission's financial statement for the year ending 31 March 2004 is attached to this report as **Appendix B**. The Commission posted a deficit in the current year of some $2,430. The Commission's reserve fund was reduced by an equal amount and as noted above at year end stood at $33,183.37. It is anticipated that the reserve fund will be utilized almost in its entirety for the upcoming fiscal year in order to address long outstanding staff remuneration issues, to support the Rules Revision Project and meet other contingencies. While the Commission expects to operate within its available resources during the upcoming fiscal year, it is apparent that supplementary funding in support of the Rules Project will be required during the fiscal year 2005-06. The Department of Justice has been fully advised of this prospective financial situation, and a request for such supplementary funding had been made by year end.

C. LOOKING AHEAD

The Commission looks forward to the upcoming year with enthusiasm and renewed optimism. The Commission believes that its work during the past year has contributed positively to the improvement of the laws in the province of Nova Scotia. Its work on builders' liens was ultimately of practical benefit to many. Similarly, the Commission's work on reform of the *Wills Act* has the potential to make a substantive contribution to modernization and reform of Nova Scotia law. Certainly the public and media interest in the Commission's Final Report on reform of the *Wills Act* suggests that there was merit in the Commission undertaking that project. The Civil Procedure Rules Project is clearly an important component of access to justice and stands to be of real benefit to all those who use the courts as well as providing broader socio-economic benefits.

The Commission over the past year has received strong expressions of support from a broad spectrum of the legal and judicial community, from the Premier of Nova Scotia, and the leaders of the two Opposition Parties. The invitation to the Commission to participate in and play a central role in the Rules Revision Project is a vote of confidence in the Commission.

Nonetheless, law reform agencies continue to be, in most jurisdictions, vulnerable if not prey to the competing claims to limited public funds. Although the international stage provides a dramatic backdrop to the enduring need for law reform as a necessary adjunct to the maintenance to the rule of law, this nexus is unfortunately not always seen or appreciated at home. In looking ahead, we are encouraged to believe that the strong expressions of support which the Commission has received during the past year are a product in part of the continuing quality of the Commission's work and will augur well for its future.

In summary, the 2003-2004 fiscal year was a positive one in which the Commission both completed and initiated a number of important and worthwhile projects, continued to broaden and deepen its support in the community and enjoyed stable core funding.

D. COMMISSIONERS AND STAFF[12]

COMMISSIONERS

Thomas A. Cromwell
Commissioner (2002 -)
Mr. Cromwell was called to the Ontario Bar in 1979 and to the Nova Scotia Bar in 1984. In 1997, he was appointed to the Court of Appeal of Nova Scotia. Prior to his judicial appointment, he practiced law in Ontario and taught at the faculties of law at both Queen's and Dalhousie Universities.

[12] Details provided are current as of March 31, 2004.

Keith R. Evans
Commissioner (2002 -)
Appointed to the Commission in January 2002, Mr. Evans is an associate professor at the Faculty of Law, Dalhousie University, where he specializes in corporate and commercial law. His extensive professional background includes work as a legal academic and practicing lawyer, both in Nova Scotia and overseas. Mr. Evans is President of the Commission.

Diana Ginn
Commissioner (June 2002 -)
Ms. Ginn was appointed by Order in Council in June of 2002. She is an associate professor at the Faculty of Law, Dalhousie University, teaching in the areas of property law, administrative law, health law and women in the law. Ms. Ginn specializes in research and writing in these subject areas, and has published numerous articles.

Darlene Jamieson
Commissioner (June 2002 -)
The Council of the Nova Scotia Barristers' Society appointed Ms. Jamieson to the Law Commission Board in June of 2002. She has been a Partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

Donald H. McDougall, Q.C.
Commissioner (June 2002 -)
The Council of the Nova Scotia Barristers' Society appointed Mr. McDougall, a Partner in the firm Stewart McKelvey Stirling Scales, to the Board of the Law Commission in June of 2002. He earned his Masters degree at the University of London in England, and received his Queen's Counsel designation in 1982. Mr. McDougall was a founding Vice-President of Sport Nova Scotia, and has held various media-related posts.

E. Arleen Paris
Commissioner 2002 -)
Ms. Paris was appointed to the Commission in January 2002. She is a retired medical laboratory technologist, who worked with the Nova Scotia Department of Agriculture and Fisheries, as well as at hospitals in Nova Scotia and New Brunswick. A resident of Truro, Ms. Paris is involved in a number of community activities.

STAFF

John E.S. Briggs
Executive Director & General Counsel
Mr. Briggs joined the Commission as Executive Director & General Counsel in May, 2001. He

also acts as occasional Outside Counsel to the Federal Minister of Justice on alleged miscarriage of justice cases.

Mr. Briggs is a graduate of Carleton, Queens and Oxford universities, and has extensive experience in the practice of law, both in the public and private sectors, having been called to the bar in 1974. He holds membership in the Nova Scotia Barristers' Society and in the law societies of Ontario and the Territory of Nunavut. Mr. Briggs is the current President of the Federation of Law Reform Agencies of Canada and is a member of the Canadian Bar Association, the Canadian Institute for the Administration of Justice and the International Society for the Reform of Criminal Law.

Mr. Briggs has appeared in the Supreme Court of Canada on constitutional cases and has acted as Counsel to the Territorial Government of Nunavut, Special Counsel to the Assembly of First Nations, Special Advisor to the RCMP, Public Complaints Commission, Special Adviser to the Law Reform Commission of Canada, and Director of Research to the Royal Commission on the Donald Marshall Jr. Prosecution.

William H. Laurence
Legal Research Counsel
Mr. Laurence joined the Commission in September, 1998. He has a B.A. (Hon.) from Carleton University, and LL.B. from McGill University as well as an LL.M. and M.L.I.S. from Dalhousie University. He worked as a legal researcher and practiced law before joining the Commission.

Mary Bowen
Administrative Assistant
Ms. Bowen joined the Commission in June of 2002. She has extensive experience in senior executive secretarial positions.

Appendix A.

The Law Reform Commission Act

CHAPTER 17 OF THE ACTS OF 1990

An Act to Establish an Independent Law Reform Commission

Short title

1 This Act may be cited as the *Law Reform Commission Act*. 1990, c.17, s.1.

Interpretation

2 In this Act, "Commission" means the Law Reform Commission of Nova Scotia. 1990, c.17, s.2.

Law Reform Commission of Nova Scotia

3 There is hereby established a body corporate to be known as the Law Reform Commission of Nova Scotia. 1990, c.17, s.3.

Object of Commission

4 The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures. 1990, c.17, s.4.

Composition of Commission

5 (1) The Commission shall be composed of not fewer than five nor more than seven commissioners who may be appointed, either on a full-time basis or a part-time basis, as follows:

(a) two members of the Nova Scotia Barristers' Society appointed by the Council of the Society;

(b) a judge of a court of the Province, appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member;

(c) a full-time member of the Faculty of Law of Dalhousie University appointed by the Governor in Council after consultation with the Dean of the Faculty;

(d) a person who is not a graduate in law appointed by the Governor in Council;

(e) where the Governor in Council determines that the Commission is to be composed of more than five commissioners, one or two persons appointed by the Governor in Council.

Term of office of commissioner

(2) Each commissioner holds office for a term of three years, except that one of the first commissioners appointed by the Council of the Nova Scotia Barristers' Society and one of the first commissioners appointed by the Governor in Council shall be appointed for a term of two years.

Ceasing to be a commissioner

(3) A person ceases to be a commissioner where

(a) that person fails to attend three consecutive regular meetings of the Commission, except where the Commission by resolution excuses the absences; or

(b) the composition of the Commission ceases to comply with this Act as a result of the person ceasing to be a person described in clause (a), (b), (c) or (d) of subsection (1).

Casual vacancies

(4) Where a person ceases to be a commissioner for any reason other than the expiration of that person's term of office, the Governor in Council or the Council of the Nova Scotia Barristers' Society, as the case may be, shall appoint a person for the unexpired portion of the term.

Re-appointment of commissioner

(5) A commissioner whose term of office has expired may be re-appointed.

Expiry of term of office

(6) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Vacancy

(7) A vacancy in the membership of the Commission does not impair the ability of the remaining members to act. 1990, c.17, s.5.

President of Commission

6 The commissioners shall appoint one of the members of the Commission to be the President of the Commission. 1990, c.17, s.6.

Remuneration and expenses

7 The President and other members of the Commission may be paid such remuneration and shall be paid such travelling and living expenses as may be determined by the Governor in Council. 1990, c.17, s.7.

Powers of Commission

8 (1) The Commission may

(a) receive and consider any proposals for the reform of the law that may be made to it by any person;

(b) initiate, carry out and direct such studies and research as are necessary to properly carry out its object;

(c) publish papers, studies or other documents prepared by or for the Commission;

(d) co-operate or enter into agreements with any organization that undertakes projects relating to the object of the Commission within or outside the Province;

(e) with the concurrence of the Attorney General and to the extent that the Commission is able to do so without, in its opinion, impairing its ability to carry out its object or duties, provide information, research material and study results and make recommendations to departments, boards and agencies of the Government of the Province concerned with the improvement, modernization or reform of laws;

(f) regulate its proceedings and provide generally for the conduct and management of its affairs;

(g) do such things and take such measures as the Commission considers advisable for the achievement of its object, including the making of by-laws.

Duties and further powers of Commission

(2) The Commission

(a) may make use of technical and other information, advice and assistance from departments, boards and agencies of the Government of the Province;

(b) shall undertake, at the request of the Attorney General, in a manner as determined by the Commission, the examination of particular laws or branches of the law and make recommendations for their improvement, modernization and reform. 1990, c.17, s.8.

Meetings of Commission

9 The Commission shall meet at least four times in each year. 1990, c.17, s.9.

Personnel

10 (1) An Executive Director and such persons as are required for the administration of this Act and the regulations shall be appointed by the Commission, in accordance with the *Civil Service Act*.

Function of Executive Director

(2) The Executive Director has the management, direction, control and administration of the day-to-day operations of the Commission.

Advisers

(3) Notwithstanding subsection (1), the Commission may engage, upon such terms and conditions as the Commission deems fit, the services of such professional persons, technical persons and experts to advise the Commission as the Commission deems necessary for the carrying out of its object. 1990, c.17, s.10.

Appropriation of money

11 (1) Money appropriated by the Legislature for the purpose of this Act shall be paid out by the Attorney General.

Law Reform Commission Fund

(2) The Commission shall maintain an account to be under the control and management of the Commission, to be known as the Law Reform Commission Fund, into which the Attorney General may pay from time to time any sum of money appropriated and into which may be paid any sum of money contributed as a grant or gift by any person, organization or body.

Use of money in Fund

(3) Except where a stipulation or condition is expressed in relation to a sum of money paid into the Law Reform Commission Fund, the money in the Fund may be used by

the Commission for the purpose of this Act. 1990, c.17, s.11.

Annual report to Attorney General

12 (1) The Commission shall report from time to time to the Attorney General and shall make an annual report to the Attorney General on the activities of the Commission.

Tabling of annual report

(2) The Attorney General shall table the annual report of the Commission in the Assembly, if the Assembly is then sitting and, if the Assembly is not sitting, within fifteen days of its next sitting.

Other report

(3) Where the Commission reviews, considers or inquires into a matter, the Commission shall make a report to the Attorney General with respect to that matter at the conclusion of its deliberations.

Publication of report

(4) The Commission may publish a report made pursuant to this Section. 1990, c.17, s.12.

Repeal

13 Chapter 251 of the Revised Statutes, 1989, the *Law Reform Act*, is repealed. 1990, c.17, s.13.

Proclamation

14 This Act comes into force on and not before such days as the Governor in Council orders and declares by proclamation. 1990, c.17, s.14.

Proclaimed	-	January 22, 1991
In force	-	February 1, 1991

Appendix B.

Financial Report for the 2003-2004 Fiscal Year

LAW REFORM COMMISSION OF NOVA SCOTIA
Balance Sheet as at 3/31/04

ASSETS		
CURRENT ASSETS		
Petty cash		25.00
Bank Operating Account	267,349.20	
T Bill Account	21,332.96	
Total Cash		288,682.16
TOTAL CURRENT ASSETS		288,707.16
FIXED ASSETS		
Computer Equipment	19,059.16	
Accum Computer Equipment	-19,059.16	
Net Office Equipment		0.00
TOTAL FIXED ASSETS		0.00
TOTAL ASSETS		288,707.16
LIABILITIES		
CURRENT LIABILITIES		
Accrued Salary		5,523.79
UIC Payable	0.00	
CPP Payable	0.00	
Income Tax Payable	0.00	
Receiver General Payable		0.00
Accrued income		250,000.00
TOTAL CURRENT LIABILITIES		255,523.79
TOTAL LIABILITIES		255,523.79
EQUITY		
SURPLUS		
Surplus Beginning of Year		35,614.05
Surplus Current Year		-2,430.68
ACCUMULATED SURPLUS		33,183.37
TOTAL EQUITY		33,183.37
LIABILITIES AND EQUITY		288,707.16

LAW REFORM COMMISSION OF NOVA SCOTIA
Income Statement as at 3/31/04

REVENUE		
OPERATING & PROJECT INCOME		
NS Law Foundation contribution		250,000.00
Interest income		323.18
TOTAL CONTRIBUTIONS		250,323.18
TOTAL REVENUE		250,323.18
EXPENSE		
ADMINISTRATIVE EXPENSES		
Wages	172,278.33	
EI expense	3,116.19	
CPP expense	4,925.11	
Group insurance expense	8,250.37	
TOTAL PERSONNEL RELATED		187,570.00
Advertising		0.00
Non legal consultants fees		0.00
Commissioners fees & expenses		2,301.73
Electrical expense		1,175.29
Meeting costs		790.77
Library		1,801.01
Accounting fees		172.50
Membership dues		1,479.82
Professional fees		2,961.25
Computer software/supplies/repairs		1,277.32
Internet		2,096.57
Staff expenses		910.04
Temp staff expenses		0.00
Rent	25,426.92	
Office equipment rental	3,861.79	
Insurance	607.00	
TOTAL PREMISES RELATED		29,895.71
Office supplies	3,334.16	
Parking	86.50	
Photocopy/printing	6,627.57	
Postage & courier	3,486.92	
Telephone expense	3,941.15	
Travel/conference/workshop	2,518.55	
Staff development/registration fees	0.00	
TOTAL OFFICE RELATED		19,994.85
Bank charges		117.00
Miscellaneous		210.00
HST paid on purchases		0.00
GST paid on purchases		0.00
TOTAL ADMINISTRATION		252,753.86
TOTAL EXPENSE		252,753.86
NET INCOME		- 2,430.68

Appendix C.

List of Publications (by project) 1991-2004

Law Reform Commission Publications

(As of March 31, 2004)

Administrative Justice System (Agencies, Boards and Commissions - ABC Report)

- *Agencies Boards and Commissions: The Administrative Justice System* (Discussion Paper, January 1996)
- *Reform of the Administrative Justice System in Nova Scotia* (Final Report, January 1997)

Adult Guardianship/Advance Health Care Directives

- *Adult Guardianship in Nova Scotia* (Discussion Paper, September 1993)
- *Living Wills in Nova Scotia* (Discussion Paper, November 1994)
- *Adult Guardianship and Personal Health Care Decisions* (Final Report, November 1995)

Domestic Violence

- *Violence in a Domestic Context* (Discussion Paper, March 1993)
- *From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia* (Final Report, February 1995)

Enduring Powers of Attorney

- *Enduring Powers of Attorney in Nova Scotia* (Discussion Paper, June 1998)
- *Enduring Powers of Attorney in Nova Scotia* (Final Report, September 1999)

Enforcement of Maintenance Obligations

- *Enforcement of Maintenance Obligations* (Discussion Paper, July 1992)
- *Enforcement of Maintenance Obligations* (Final Report, November 1992)
-

Future of the Law Reform Commission

- *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia* (Report, December 2001)

Interim Payment of Damages

- *Interim Payment of Damages* (Discussion Paper, January 2000)
- *Interim Payment of Damages* (Final Report, February 2001)

Jury System

- *Reform of the Jury System in Nova Scotia* (Discussion Paper, May 1993)
- *Reform of the Jury System in Nova Scotia* (Final Report, June 1994)

Matrimonial Property

- *Matrimonial Property in Nova Scotia: Suggestions for a New Family Law Act* (Discussion Paper, April 1996)
- *Reform of the Law Dealing with Matrimonial Property in Nova Scotia* (Final Report, March 1997)

Mechanics' Lien Act

- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Discussion Paper, January 2003)
- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Final Report June 2003)

Mental Health Provisions

- *Mental Health Provisions of the Hospitals Act* (Discussion Paper, September 2000)
- *Mental Health Provisions of the Hospitals Act* (Final Report, February 2002)

Mortgage Foreclosure and Sale

- *Mortgage Foreclosure and Sale* (Discussion Paper, July 1997)
- *Mortgage Foreclosure and Sale* (Final Report, September 1998)

Privity of Contract

- *Privity of Contract (Third Party Rights)* (Discussion Paper, March 2004)

Probate

- *Probate Reform in Nova Scotia* (Discussion Paper, March 1998)
- *Probate Reform in Nova Scotia* (Final Report, March 1999)

Status of the Child Born Outside Marriage

- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Discussion Paper, August 1993)
- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Final Report, March 1995)

Tortfeasors

- *Joint Tortfeasors & the Common Law "Release Bar Rule"* (Final Report July 2002)

***Wills Act*:**

- *Reform of the Nova Scotia Wills Act* (Discussion Paper, July 2003)
- *Reform of the Nova Scotia Wills Act* (Final Report, November 2003)

Twelve Annual Reports

- April 1, 1991 - March 31, 1992
- April 1, 1992 - March 31, 1993
- April 1, 1993 - March 31, 1994
- April 1, 1994 - March 31, 1995
- April 1, 1995 - March 31, 1996
- April 1, 1996 - March 31, 1997
- April 1, 1997 - March 31, 1998
- April 1, 1998 - March 31, 1999
- April 1, 1999 - March 31, 2000
- April 1, 2000 - March 31, 2001
- April 1, 2001 - March 31, 2002
- April 1, 2002 - March 31, 2003